

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JOHN JOSEPH FORJONE, etc., et al.,

*Plaintiff,*

vs.

The States of CALIFORNIA, et al.,

06-CV-0080 A (Sc)

*Defendants,*

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**MOTION TO DISMISS, CHANGE VENUE,  
OR FOR A MORE DEFINITE STATEMENT**

MOTION BY:

Defendant County of Erie

RELIEF SOUGHT:

Dismissal of complaint pursuant to Rules 12(b)(6); or change of venue to Northern District of New York, pursuant to 28 U.S.C. § 1404 (a); or order requiring plaintiffs to file a more definite statement, pursuant to Rule 8(a) of the F.R.Cv.P.

RETURNABLE:

At a date and time to be set by the Court, at U.S. Court House, 68 Court Street, Buffalo, New York 14202

SUPPORTING PAPERS:

Declaration of Joseph F. Reina, Esq. dated March 21<sup>st</sup>, 2006.

DATED: Buffalo, New York  
March 21<sup>st</sup>, 2006

LAURENCE K. RUBIN, ESQ.  
Erie County Attorney  
Attorney for Defendant

By /s/ Joseph F. Reina  
Joseph F. Reina, Esq.  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JOHN JOSEPH FORJONE, etc., et al.,

*Plaintiff,*

vs.

The States of CALIFORNIA, et al.,

06-CV-0080 A (Sc)

*Defendants,*

---

**DECLARATION IN SUPPORT OF MOTION BY  
ERIE COUNTY TO DISMISS COMPLAINT, OR  
CHANGE OF VENUE, OR FOR A MORE  
DEFINITE STATEMENT**

Joseph F. Reina, declares under penalty of perjury as follows:

1. I am an Attorney at Law duly admitted to practice in this Court, and I am an Assistant Erie County Attorney to Laurence K. Rubin, Erie County attorney and attorney for defendant, County of Erie.

2. This Declaration is submitted in support of the motion of Erie County which includes the Erie County Board of Elections, [improperly sued herein as a “Municipal Board of Elections”], hereinafter jointly referred to as “Erie County”, for an Order dismissing the complaint for failure to state a claim against Erie County. Alternatively, Erie County requests that this action be transferred to the Northern District of New York where plaintiffs have a

similar action pending, or that the Court order plaintiffs to serve and file a more definite statement of their claims.

3. It should be beyond dispute that the complaint is difficult to read. Nevertheless, Erie County feels that the common criticism which seems to weave itself through the complaint is (i) the alleged unfair allocation of payments made to the states in order to implement computerized statewide voter registration lists as provided for in the HELP AMERICA VOTE ACT, (“HAVA”), 42 U.S.C. §15301, *et seq.*, and (ii) the alleged failure of some or all of the states named as defendants to implement such statewide lists.

4. First, the complaint claims that it would be more equitable to use the more restrictive “Citizens Voting Age Population” in the place of “Voting Age Population” as the measure by which payments are made to the states. (¶¶ 22-25)<sup>1</sup>.

5. Second, the complaint seems to claim that New York is not compliant with the requirement to implement computerized statewide voter registration lists, and as a result thereof, the present day Senate, Assembly and Judicial district boundaries are no longer compliant with the New York State Constitution.

6. The Complaint alleges six causes of actions. Only two of them mention “municipalities”. The fifth cause of action, (¶48), alleges that the municipalities, along with both the federal and state defendants, cost the taxpayers money because of the alleged failure to implement a computerized statewide voter registration list. However, as it relates to Erie County, there is no provision in HAVA obligating any County to implement such a list. A reading of the relevant section, 42 U.S.C. ¶15483, reveals no reference to a county when discussing the implementation of such a list and/or a legal duty to do so.

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<sup>1</sup> References to paragraphs refer to paragraphs of the complaint.

7. The sixth cause of action, (§ 49), alleges that the municipalities, along with the federal and state defendants, are continuing to draw various election district boundaries in a manner not compliant with various states' constitutions. With regard to Erie County's ability to draw election district boundaries, Erie County adopts and repeats the argument made by Assistant Attorney General Peter B. Sullivan, in his memorandum, (Point II @ pg.6), submitted in support of defendants', Eliot Spitzer, New York State Attorney General and the New York Secretary of State, motion to dismiss, change venue or for a more definite statement. Mr. Sullivan's argument negates any assumption that counties have the power to alter the election district boundaries; "The current district boundaries in New York were defined by the New York State Legislature in April of 2002, following the 2000 census. Rodriquez v. Patecki, 308 F. Supp. 2d 346, 351 (S.D.N.Y. 2004) (three judge court). The districts are defined by statutes enacted and amended from time to time by the Legislature. *See, e.g.*, New York Law § 111 (congressional districts); § 121 (assembly districts); § 124 (senate districts); and New York Judiciary Law §140 (judicial districts). In enacting these provisions the legislature was acting pursuant to its authority under the New York State Constitution, article III § 4."

8. Further, Erie County agrees that plaintiffs lack standing to commence this litigation. Erie County adopts the arguments made by Mr. Sullivan under Point III of his memorandum with regard to plaintiffs' lack of standing and the inability to commence a private cause of action under HAVA. In regard to Mr. Sullivan's reference to taxpayer actions, (pg.10), Erie County adds only that plaintiffs have not alleged that one or more of them are persons who own real property in and pay real property taxes to Erie County. Nor have plaintiffs otherwise

alleged that they have brought a taxpayer action or have standing to bring a taxpayer action against Erie County.

9. Finally, in the event the complaint is not dismissed, Erie County joins in the alternative relief requested by the Attorney General and Secretary of State for the reasons stated under Points IV and V of Mr. Sullivan's memorandum.

DATED: Buffalo, New York  
March 21<sup>st</sup>, 2006

Respectfully submitted,

LAURENCE K. RUBIN, ESQ.  
Erie County Attorney  
Attorney for Defendant  
County of Erie

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### **CERTIFICATE OF SERVICE**

I certify that on March 22<sup>nd</sup>, 2006, I electronically filed the foregoing with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participant(s) in this action:

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I also certify that I have mailed the foregoing Motion and Declaration, by the United States Postal Service, to the following non-CM/ECF participant(s):

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DATED: Buffalo, New York  
March 22<sup>nd</sup>, 2006

Yours,

LAURENCE K. RUBIN, ESQ.  
Erie County Attorney and Attorney  
For Defendant County of Erie

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